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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/924,404	08/07/2001	Colin Oloman	6510-PA04D	6879
27111	7590	05/05/2004	EXAMINER	
BROWN, MARTIN, HALLER & MCCLAIN LLP 1660 UNION STREET SAN DIEGO, CA 92101-2926			NICOLAS, WESLEY A	
			ART UNIT	PAPER NUMBER
			1742	

DATE MAILED: 05/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/924,404	OLOMAN ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Wesley A. Nicolas	1742	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 25 February 2004.
- 2a) ☒ This action is **FINAL**.      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 37 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 37 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☒ Certified copies of the priority documents have been received in Application No. 09/353,245
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date: _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date: _____  | 6) <input type="checkbox"/> Other: _____                                    |

### **DETAILED ACTION**

This is in response to the Amendment submitted February 25, 2004. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim 37 is currently pending in this application.

#### **Claim Rejections - 35 USC § 102**

1. Claim 37 is rejected under 35 U.S.C. 102(b) as being anticipated by Bolick, II et al. ("Bolick") (U.S. 4,992,147).

The 35 U.S.C. § 102 rejection of claim 37 in view of Bolick has been **maintained** and as set forth in the previous Office action.

2. Claim 37 is rejected under 35 U.S.C. 102(b) as being anticipated by Joshi et al. (5,567,287).

The 35 U.S.C. § 102 rejection of claim 37 in view of Joshi et al. has been **maintained** and as set forth in the previous Office action.

#### **Remarks - Response to Arguments**

3. Applicant's arguments filed February 25, 2004 have been fully considered but they are not persuasive.

First, Applicant argues that Joshi et al. reference does not teach a membrane being adapted to accommodate volume changes of the electrolyte. Examiner must

respectfully disagree. Joshi et al. disclose a membrane at numeral 9 which is a "sack...made of a flexible material, such as Barex or ethylene vinyl alcohol film." (col. 10, lines 29-31). It should be noted that Applicant has not stated that the electrolyte is contained *within* the flexible membrane, but just that the electrolyte is contained by the flexible membrane and that is the case with Joshi et al. Furthermore, Applicant has provided mere conclusory statements as to why Joshi et al. does not teach Applicant's invention and has provided no convincing arguments.

Examiner asserts that every membrane is adapted to accommodate the compression of a fluid. Applicant's claim makes no mention of how the membrane accommodates the compression of the electrolyte (*i.e.* stretching, shrinking, etc.).

Second, Applicant argues that Bolick fails to teach the specific feature of a membrane adapted to accommodate the compression of electrolyte because Bolick teaches a cation exchange membrane which Applicant thinks is materially different than the membrane of the instantly claimed invention. (response submitted 2/25/04, page 4). Applicant further argues that the membrane in Bolick is structurally and functionally different than the membrane of the instantly claimed invention. (response submitted 2/25/04, page 4).

In response, Examiner must respectfully disagree. Just because the membrane in Bolick may be a cation exchange membrane, Examiner asserts that it is still capable of accommodating the compression of the electrolyte, as is the nature of all membranes. Furthermore, Applicant has not provided any convincing arguments as to why the membrane of Bolick is not capable of performing the same function or does not

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exhibit the same properties of the instantly claimed invention. Applicant has merely provided only conclusory statements that the membrane in the prior art is not the same as the membrane in the instantly claimed invention without providing evidence to back up the statements.

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***Conclusion***

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

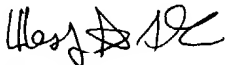
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Wesley Nicolas whose telephone number is (571) 272-1247. The examiner can normally be reached on Mon.-Thurs. from 7 AM to 5 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Roy King, can be reached at (571) 272-1244. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov> . Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Wesley A. Nicolas  
Primary Examiner

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May 3, 2004